

Guardianship Program Rules

704 Insurance

704.1 Purpose. The purpose of this regulation is to provide coverage for damages resulting from unintentional errors and omissions of the guardian and its employees.

704.2 Requirements. Certified professional guardians (guardians) and certified professional guardian agencies (agencies) shall maintain a minimum of \$500,000.00 of errors and omissions insurance which covers the acts of the guardian or agency, and employees of the guardian or agency, unless exempted or waived by this regulation.

704.3 Exemptions. Guardians or agencies with 25 or fewer guardianship case appointments at one time and with less than \$500,000.00 total countable guardianship assets under management are exempt from the requirement of maintaining errors and omissions insurance as set forth in this regulation. With respect to this regulation, only those appointments held in the name of the guardian or agency shall be counted toward the caseload or monetary limit.

704.4 Countable Guardianship Assets

704.4.1 "Countable guardianship assets" shall consist of all real property, money, stocks, bonds, promissory notes and other investments in all of the guardianship estates currently managed by the guardian or agency. The value of an asset shall be its fair market value. In determining the value of an asset, the value as determined by a county assessor, or public price listed on a recognized exchange, may be used as its fair market value. The value of an asset shall not be reduced by the amount of any encumbrance on the asset. Insurance policies and other securities shall be included at face value or as listed on a recognized exchange. Countable guardianship assets shall not include burial trusts, pensions, or personal property other than as described in this regulation.

704.4.2 Issues as to whether or not an asset should be included in the countable guardianship assets of a guardian or agency shall be resolved with a preference toward including the asset as a countable guardianship asset.

704.5 Annual E & O Insurance Declaration

704.5.1. By August 1 each year, every guardian and agency shall file with the Board an E & O Insurance Declaration signed under penalty of perjury, on a form approved by the Board, stating that the guardian or agency either maintains a policy of errors and omissions insurance, or is exempt from said requirement, or has petitioned for and received a waiver based on a determination by the Board that it is impractical for the guardian or agency to comply with this regulation and the guardian or agency has provided a satisfactory alternative that meets the purpose of this regulation.

704.5.2. A guardian or agency who is required by this regulation to carry an errors and omissions policy shall include a declaration page from its policy of errors and omissions insurance of not less than five hundred thousand dollars (\$500,000) with the guardian's or agency's annual declaration signed under penalty of perjury.

704.5.3 At any time, the Board may request information from the guardian or agency to determine whether the guardian or agency meets the requirements of this regulation. Failure of the guardian or agency to cooperate may subject the guardian or agency to disciplinary action under this regulation.

704.6 Duty to Report Loss of Insurance or Change of Status

704.6.1 A guardian or agency shall report to the Board in writing any lapse or cancellation of errors and omission coverage within fifteen (15) calendar days of the notice to the guardian or agency of that cancellation or lapse and provide a copy of the notice of non-renewal from the insurance company. The guardian or agency shall have forty-five (45) calendar days from notice to the guardian or agency of that cancellation or lapse to meet the requirements of this regulation and to file a declaration under penalty of perjury on a form approved by the Board stating that the guardian or agency meets the requirements of regulation 117.

704.6.2 A guardian or agency who has previously claimed exempt status pursuant to this regulation, whose caseload changes during the year so that the guardian or agency is no longer exempt, shall within fifteen (15) calendar days of the status change file a declaration under penalty of perjury with the Board on a form approved by the Board stating how the guardian or agency meets the requirements of this regulation.

704.7 Failure to Comply

704.7.1 Failure to comply with this regulation in any part may subject the guardian and/or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.

704.7.2 Failure to submit the required E & O Insurance Declaration by August 1 will subject the guardian and/or agency to a special service fee if paid before September 1.

704.7.3 In the event of a guardian's or agency's failure to comply with this regulation, the Board shall send a written notice of noncompliance with this regulation to the guardian or agency by certified mail, directed to the last known address as maintained on the records of the Administrative Office of the Courts. The notice shall advise the CPG or Agency of the pendency of decertification for failure to submit the required declaration. The notice shall further advise the CPG or Agency that if the CPG or Agency believes that an administrative error has been made and that the CPG or Agency is not in default on the obligation to submit the required declaration, the CPG or Agency may file a petition requesting an administrative hearing. The petition must set forth facts either explaining how the guardian or agency has complied with this regulation or, if the guardian or agency acknowledges that there has not been compliance with the regulation, then the facts in support of why the Board should not take disciplinary action against the guardian or agency. The petition must be signed under penalty of perjury by the guardian. The guardian or agency must file the petition with the Board within ten (10) calendar days of notice of noncompliance by the Board.

704.7.4 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPG or Agency.

704.7.5 The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPG or Agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by certified mail to the CPG or Agency. Any such order shall be final.

704.8 Waiver

704.8.1 A guardian may request a waiver from the requirement in this regulation that the guardian maintain errors and omissions insurance. (The term "guardian" in this section refers to either an individual or an agency.) To be eligible for a waiver, the guardian must show that it is impractical for the guardian to obtain such insurance and that the guardian will provide a satisfactory alternative to such insurance.

704.8.2 It is impractical for a guardian to obtain errors and omissions insurance if a guardian provides documentation and verifies under penalty of perjury that the guardian has applied and has been rejected by at least two insurance carriers for errors and omissions coverage or that the guardian has had errors and omissions insurance cancelled by the insurance provider or underwriter. A satisfactory alternative to such insurance is one which provides an adequate guarantee that any damages resulting from the unintentional errors and omissions of a guardian and its employees will be compensated in like amounts as the amount of coverage required under this regulation for errors and omissions insurance. Such alternatives may include a general purpose bond in the amount of \$500,000, or evidence of security in the amount of \$500,000, or such other alternative that provides for financial responsibility in the amount of \$500,000.

704.8.3 To request a waiver, the guardian must file a written petition with the Board stating why it is impractical for the guardian to obtain insurance and describing the alternative to insurance that the guardian will provide. The petition must be signed by the guardian under penalty of perjury. If the petitioner is an agency, one of the designated guardians for the agency must sign the petition. The petitioner must submit copies of the denial or cancellation of coverage received by the petitioner, and copies of the applications submitted by the guardian for said coverage. The petitioner may include other written materials in support of its petition. The petitioner must file the petition and supporting materials electronically with the Board unless permission is granted by the Board to file materials in a paper format.

704.8.4 Petitions will be reviewed by the Financial Responsibility Committee of the Board. The members of such committee shall be appointed by the Chair of the Board. The Chair of the Board shall designate one of the members as the Chair of the committee. The term of all members, including the Chair of the committee, shall be one year.

704.8.5 The Financial Responsibility Committee shall report to the Board on the merits of the petition.

704.8.6 The Board may approve the petition, with or without conditions, or refer the petition back to the Financial Responsibility Committee for additional information, or deny the petition.

704.8.7 If the Board denies a petition, the petitioner will be given written notice of the denial and the right to appeal under these regulations.

704.9 Right to Appeal the Board's Denial of a Waiver

704.9.1 Every petitioner shall have a right of appeal before an Appeals Panel.

704.9.2 A petitioner may appeal the Board's denial of a waiver of the insurance requirement in this regulation by submitting a written request to:

Certified Professional Guardian Board
Administrative Office of the Courts
PO Box 41170
Olympia WA 98504-1170

The request must:

Be filed within sixty (60) calendar days of the date of the denial of the waiver by the Board; identify the petitioner; and explain fully the grounds on which the petitioner bases an appeal of the denial of waiver.

704.9.3 The Chair shall appoint an Appeals Panel made up of three Board members who did not serve on the Financial Responsibility Committee. The Chair shall name one member of the panel as the chair of the panel.

704.9.4 The petitioner may submit to the AOC additional written material which may include statements, correspondence, affidavits, and memoranda of law or other information which the petitioner believes will assist the Appeals Panel in reviewing the denial of the waiver. All written materials must be received by the AOC within 30 days after the filing of the notice of appeal. AOC will supply the Appeals Panel with the appeal, all attachments, and all other material relating to the original petition for a waiver and the appeal. The Appeals Panel may use written stipulations. The date of review of the appeal will be not more than sixty (60) calendar days from the date of receipt of the appellant's materials by the AOC. The AOC will notify the appellant of the scheduled date for the consideration of the appeal. An Appeals Panel will not consider any request for appeal that does not strictly comply with the times stated, unless waived by the Appeals Panel. Upon a showing of good cause, the Appeals Panel may waive the time requirements. The assigned Appeals Panel shall consider the written material submitted. The Appeals Panel may, in its sole discretion, make a decision based solely on the written record, or it may request an oral presentation by the appellant. The appellant shall be informed of the place, time, and duration of an oral presentation. Telephone conferences may be held at the discretion of the Appeals Panel.

Within twenty (20) calendar days after the date of review of the appeal, the assigned Appeals Panel shall file with the AOC written findings of fact, conclusions of law, and a recommendation to the Board to approve or deny the appeal. The AOC shall notify the petitioner of the findings, conclusions, and recommendation of the Appeals Panel within five (5) business days.

Within sixty (60) calendar days, the Board shall review the findings, conclusions and recommendation of the Appeals Panel. No further oral or written argument will be allowed the parties, and no further evidence may be submitted to the Board. The Board shall adopt, modify, or reverse the findings, conclusions, and recommendation of the Appeals Panel. A copy of the Board's decision, as set forth in the minutes of the Board meeting or in a separate written decision of the Board, shall be served on the appellant by mail within thirty (30) calendar days.

704.10 An individual may not practice as a professional guardian unless he or she maintains errors and omissions insurance or has been granted a waiver by the Board except during any periods that the Board suspends the requirement to maintain errors and omission insurance.

704.11 Regulation 117 shall not apply to guardians or agencies if the Board determines that errors and omissions insurance is not generally available, is cost prohibitive, or for any other reason the Board decides to suspend the requirements of this regulation.